

HARRIS A. BAKKEN

JUNE 27, 1952.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 746]

The Committee on the Judiciary, to which was referred the bill (H. R. 746) for the relief of Harris A. Bakken, having considered the same, reports favorably thereon, with amendments, and recommends that the bill, as amended, do pass.

AMENDMENTS

On page 1, line 6, delete the figure "\$3,692.80" and insert in lieu thereof before the word "Such" the following: "\$3,692.02, plus interest which has since accrued."

On page 1, line 10, delete the figure "\$3,692.80" and insert in lieu thereof the following: "\$3,692.02, plus interest on such sum."

PURPOSE

The purpose of the proposed legislation is to relieve Harris A. Bakken, of Wilmington, Calif., of all liability to refund the United States the sum of \$3,692.02 plus interest on such sum. Such sum represents the amount for which he is accountable because of a shortage in his accounts.

STATEMENT

This is the case of an Army sales officer held accountable for a monetary shortage which occurred during his term of duty.

From July 1, 1942, until February 1, 1944, the sales officer at Vancouver Barracks was Capt. Harris A. Bakken. Being an officer of the Quartermaster Corps, he was bonded in accordance with the law. None of his civilian employees who handled cash was bonded. On February 1, 1944, when Captain Bakken was transferred to another

station, he was succeeded as sales officer at Vancouver Barracks by Capt. Theodore R. Horning. As Captain Horning was not a quartermaster officer and was not bonded, he arranged to bond those of his civilian employees who handled funds, including the store cashier and the office cashier.

During the regular annual inspection conducted at Vancouver Barracks early in June 1944, by an inspector general from the San Francisco Port of Embarkation, a spot check was made of the sales officer's accounts and this spot check, which covered 1 day in May 1944, disclosed a cash shortage. This discovery was immediately reported to higher authority, and it was directed that a thorough investigation be conducted to determine whether there were other shortages and, if so, the total amounts thereof, and to fix the responsibility for such shortage or shortages. This investigation continued for several months and at the conclusion thereof the inspector general reported that there had been a shortage of \$4,492.02 in the accounts of Captain Bakken during the period from June 1943 through January 1944, inclusive, and that there had been a shortage of \$1,401.01 in the accounts of Captain Horning during the period from February 1944 through May 1944, inclusive.

The Inspector General stated that it was difficult to place definite responsibility for the shortages on any specific individual because of the unbusinesslike methods employed, whereby funds were sometimes turned directly over to the office cashier by the purchaser, and were sometimes turned over to the office cashier by the sales officer himself with no record thereof being made, and the sales officer did not require that the funds received by the office cashier be turned over to the store cashier and registered on the control machine as prescribed by Army Regulations. However, several facts which came to light during the course of the investigation directed attention toward the civilian employee who had, during the entire period in question, occupied the position of office cashier. There were unexplained deposits in her personal bank account; during a period when she was away on a vacation no shortages occurred; when certain functions of the sales officer were transferred from her to someone else, shortages in such functions ceased; and when she was transferred from the position of office cashier, all shortages ceased. While all of this evidence was, of course, circumstantial, the Inspector General believed that it was sufficient to indicate that she was the person responsible for the shortages, and that she had been enabled to embezzle Government funds through the negligence of the two sales officers in failing to institute and maintain the system of double checks required by Army Regulations and ordinary business sagacity and in failing to maintain an adequate and proper supervision over the functions and personnel of the sales office. The Inspector General further found that the two sales officers had been negligent in failing to check the sources of receipts against the consolidated deposit form (Form 389) which was prepared by the office cashier since such a check would have quickly disclosed that not all of the receipts of the sales office were being deposited with the finance officer.

Upon the basis of the findings of negligence on the part of Captain Bakken and Captain Horning, the Inspector General recommended that Captain Bakken be held pecuniarily liable for the shortage of \$4,492.02, which had occurred during the period of his tenure as sales

officer at Vancouver Barracks, and that Captain Horning be held pecuniarily liable for the shortage of \$1,401.01, which had occurred during the period of his tenure as such sales officer. These recommendations were approved. Meanwhile, in accordance with the provisions of the fidelity bond covering the office cashier which had become effective on February 1, 1944, the surety company was notified of the shortage attributed to her activities and subsequently a demand for payment of the amount of the shortage which had occurred between February and May 1944 was made upon it. Such amount was paid by the surety company to the United States on December 12, 1944. The Department of the Army is advised that repayment of that amount was made by the office cashier to the surety company.

On December 13, 1944, notice of the shortage which had occurred during the period from June 1943 through January 1944 was given to Captain Bakken's surety. On March 24, 1945, demand for payment of the amount of such shortage was made upon the former office cashier by the commanding officer of Vancouver Barracks. She denied responsibility for such shortage and advised that she had no intention of paying the amount involved. A demand was likewise made upon Captain Bakken and, in accordance with the law, a stoppage in the amount of \$4,492.02 was placed against his pay, collectible at the rate of \$100 per month. At the time of Captain Bakken's separation from the military service \$800 had been collected from his pay, leaving a balance due to the United States of \$3,692.02, payment of which amount has since been demanded by Captain Bakken's surety company.

On March 27, 1945, the commanding general, Ninth Service Command, wrote to Captain Bakken reprimanding him for the derelictions in the performance of his duty as sales officer at Vancouver Barracks which had resulted in the loss of public funds in the amount of \$4,492.02. The afore-mentioned communication advised Captain Bakken that such action was being taken under the one hundred and fourth article of war and that he had the right to appeal from such disciplinary action by demanding trial by general court martial. On April 6, 1945, Captain Bakken acknowledged receipt of the reprimand and stated that he did not desire to appeal.

On July 16, 1945, the War Department (now Department of the Army) transmitted the file in this matter to the Attorney General of the United States with the request that consideration be given to the advisability of instituting criminal or civil proceedings or both, against the former office cashier. On March 1, 1946, the Attorney General transmitted to the War Department an opinion of the United States attorney for the western district of Washington to the effect that the evidence of criminality on the part of the office cashier was entirely circumstantial and insufficient to warrant criminal prosecution. For the same reason he advised against any civil action against her.

On September 13, 1949, the Department of the Army advised the Attorney General that there remained a shortage of \$3,692.80 (which should have been stated as \$3,692.02) in the accounts of Captain Bakken as sales officer at Vancouver Barracks and requested that the Department of Justice take such action as might be deemed necessary to protect the interests of the United States. On September 27, 1949, the Attorney General advised the Department of the Army that the case should be referred to the General Accounting Office for the

rendition of a statement of the account of Captain Bakken in accordance with the provisions of section 2 of the act of August 8, 1888 (25 Stat. 387; 6 U. S. C. 5). Thereafter on October 26, 1949, the Department of the Army transmitted the case to the General Accounting Office for consideration. On May 21, 1951, the General Accounting Office rendered a statement of account showing that Captain Bakken was indebted to the United States in principal and interest as of May 31, 1951, in the aggregate amount of \$5,686.54 (\$3,692.02, principal; and \$1,994.52, interest) on account of the shortage in his accounts as sales officer at Vancouver Barracks. On the same date the Comptroller General transmitted a copy of said statement to Captain Bakken with the demand that he pay the United States the stated amount. The Comptroller General also sent a copy of the statement of account to the Maryland Casualty Co. on May 21, 1951, and made a demand upon said company for the sum of \$5,000, the amount of its liability as surety on the bond of Captain Bakken.

On June 5, 1951, the Comptroller General referred the claim of the United States against Captain Bakken and the Maryland Casualty Co. to the Attorney General for the institution of a court proceeding to protect the interests of the Government. Thereafter on June 14, 1951, the United States instituted suit against the Maryland Casualty Co. in the United States District Court for the District of Columbia for the recovery of the balance in the shortage of the accounts of Captain Bakken, together with interest. The complaint was served on the defendant on the same date. The time within which the defendant may plead in this case has been extended several times, the last extension being by order of court entered on December 18, 1951, which extended until March 17, 1952, the time within which the defendant may file an answer in the case.

As stated before, the Department of Justice in 1946 determined that the evidence pointing to the identity of the person directly responsible for the shortages in the accounts of Captain Horning and Captain Bakken was of such a circumstantial nature that it would not support either criminal or civil action; there is no question, however, as to the primary responsibility of Captain Bakken, the sales officer during the period the shortages in question occurred.

Captain Bakken asserts in his defense that he had so many duties in addition to that of sales officer that he was unable to give sufficient time to properly supervise the activities of the employees under his control. The shortages occurred in his accounts at a time when Captain Bakken had no assistant sales officer, and while he had the duties of bakery officer, assistant transportation officer, claims officer, and investigation officer for courts-martial cases, and acted as an instructor at the Quartermaster Unit Training Center. In view of his many duties, it necessarily followed that Captain Bakken had to place a certain amount of trust in the civilian employees working under him.

The Department of the Army in its report states:

■ In order to insure the proper safeguarding of the public funds which come into its possession, the Department of the Army is compelled to insist upon a high degree of care upon the part of the persons who are, necessarily, in the discharge of the Department's lawful functions, entrusted with the handling of such funds. The Department does not hesitate to take proper action to relieve responsible officers who incur losses due to circumstances beyond their control. However, in authorizing the Department to take such action in the case of disbursing officers,

The Congress in the act of December 13, 1944 (58 Stat. 800), specifically required that the loss must have occurred "without fault or negligence" on the part of the officer concerned. There does not appear to be any reason why the same rule of responsibility should not apply to all other officers handling public funds, including sales officers. Captain Bakken, by his own admission, was negligent in the exercise of his functions as sales officer at Vancouver Barracks in that he failed to institute the accounting safeguards required by Army regulations and in that he failed to properly supervise the activities of his subordinates. No extenuating circumstances exist which would justify Captain Bakken's relief from pecuniary liability for the losses occasioned by his own negligence and indifference to his responsibilities or the refund to him of the amount deducted from his pay to partially reimburse the United States for the loss of public funds attributable to his negligence. Accordingly, the Department of the Army recommends that this bill be not favorably considered.

The Army states above that no extenuating circumstances exist which would justify relief for claimant herein. The committee is not in agreement with such a conclusion. The Army loses sight of the many duties imposed upon Captain Bakken, any one of which was enough to occupy his full time. The committee believes that the Army itself is equally negligent in requiring one man to attend to so many activities. If Captain Bakken had only the job of sales officer, the committee believes that the shortages would not have occurred.

The committee has on a number of occasions relieved accountable officers of the armed services for financial shortages where the relieved officer demonstrates that he was free of fraud or did not benefit personally from his position as sales officer. In this connection, the Department of the Army in a supplementary report submitted to the committee under date of January 8, 1952, on the instant bill stated:

In answer to your final inquiry you are advised that the records of the Department of the Army fail to disclose any evidence of misconduct on the part of Captain Bakken as sales officer at Vancouver Barracks, Wash., or that he profited personally from his position as such sales officer.

To warrant relief, the officer must be "without fault or negligence." The committee is of the view that the many duties imposed upon the officer by the Army placed him under a severe strain, and forced him to assume many onerous and burdensome tasks, and clearly ones which he could not possibly perform in an efficient manner. Realizing that there was a degree of negligence involved, the committee is of the opinion that it was not the "fault or negligence" contemplated by the statute. The committee therefore recommends that this bill be favorably considered. Such action is in accordance with prior bills passed by this committee, notably S. 1080, Eighty-first Congress, first session, a bill for the relief of James A. Gordon.

Attached to this report and made a part herein is the supplemental report submitted to the committee by the Department of the Army under date of January 8, 1952.

DEPARTMENT OF THE ARMY,
Washington 25, D. C., January 8, 1952.

Hon. PAT McCARRAN,
*Chairman, Committee on the Judiciary,
United States Senate.*

DEAR SENATOR McCARRAN: Reference is made to the telephone request received by the Department of the Army from your committee for certain additional information for the use of the committee in the consideration of H. R. 746, Eighty-second Congress, a bill for the relief of Harris A. Bakken.

This bill passed the House of Representatives on February 20, 1951. If enacted into law in the form in which it passed the House of Representatives it will provide as follows:

"That Harris A. Bakken, of Wilmington, California, formerly sales officer at Vancouver Barracks, Washington, is relieved of all liability to refund to the United States the sum of \$3,692.80. Such sum represents the amount for which he is accountable because of a shortage in his accounts. The Comptroller General is authorized and directed to allow credit in the settlement of the accounts of the said Harris A. Bakken in the sum of \$3,692.80."

On May 10, 1948, the Department of the Army transmitted to the chairman, Committee on the Judiciary, House of Representatives, a report on H. R. 1624, Eighty-first Congress, a similar bill for the relief of this claimant. That report is printed in House Report No. 42, Eighty-second Congress, on H. R. 746, Eighty-second Congress (pp. 2-5). In its report on H. R. 1624, Eighty-first Congress, the Department of the Army stated that an investigation of the sales office at Vancouver Barracks, Wash., showed that during the period from June 1943 through January 1944, while Capt. Harris A. Bakken was sales officer at that station, there was a shortage in his accounts as such sales officer in the total sum of \$4,492.02, and that from February 1944 through May 1944, while Capt. Theodore R. Horning was sales officer at said station, there was a shortage in his accounts as such sales officer in the total amount of \$1,401.01.

The Department of the Army is advised that your committee desires answers to the following questions:

(1) Whether Capt. Theodore R. Horning, or anyone for him, has made restitution to the United States in the amount of \$1,401.01?

(2) What action has been taken by the United States to collect the sum of \$4,492.02 from the surety of Capt. Harris A. Bakken?

(3) Whether there is any evidence in the possession of the Department of the Army showing, or tending to show, that Captain Bakken profited personally from his position as sales officer at Vancouver Barracks?

Miss Virginia S. Midkiff was the office cashier of the sales office at Vancouver Barracks during the period from June 1, 1943, through January 31, 1944, while Captain Bakken was sales officer at that post, and also during the period from February 1, 1944, through May 31, 1944, while Captain Horning was sales officer at such post, and during which periods of time shortages occurred in the accounts of said sales officers. Captain Bakken was bonded while he was sales officer at Vancouver Barracks, the surety on his bond being the Maryland Casualty Co., of Baltimore, Md. Captain Horning was not bonded during the period from February 1, 1944, to May 31, 1944, when a shortage occurred in his accounts as sales officer at Vancouver Barracks, but Miss Midkiff, the office cashier of the sales office, was bonded during that period of time, the surety on her bond being the Maryland Casualty Co. Miss Midkiff was not bonded during the period while Captain Bakken was sales officer at Vancouver Barracks. The bonds of Captain Bakken and Miss Midkiff, which were signed by the Maryland Casualty Co. as surety, were each in the penal sum of \$5,000.

In the report of the Department of the Army on H. R. 1624, Eighty-first Congress, for the relief of Captain Bakken, it was stated that an investigation of the accounts of Captain Bakken and Captain Horning as sales officers at Vancouver Barracks had disclosed a shortage of \$4,492.02 in the accounts of Captain Bakken and a shortage of \$1,401.01 in the accounts of Captain Horning. A subsequent check of these shortages confirmed the amount of the shortage in Captain Bakken's accounts as \$4,492.02, but revealed a clerical error in the computation of the shortage in Captain Horning's accounts, the exact amount of such shortage being found to be \$1,398.19.

On August 26, 1944, the Maryland Casualty Co. was advised of the shortage in the accounts of Miss Midkiff as office cashier under Captain Horning. Subsequently Miss Midkiff paid to the Maryland Casualty Co. the sum of \$1,398.19, which amount in turn was paid to the United States on December 12, 1944, in reimbursement of the shortage in the accounts of Captain Horning.

On December 13, 1944, the War Department sent a letter to the Maryland Casualty Co. advising it that there was a shortage of \$4,492.02 in the accounts of Captain Bakken, which it stated was "due to his failure to use proper care in safekeeping the funds." The company was further advised that if the full amount of such shortage was not recovered a demand would be made upon it to reimburse the United States for the loss. On February 7, 1945, a demand was made by the Army upon Captain Bakken to reimburse the United States in the amount of the shortage in his accounts, and on March 24, 1945, a demand was made upon Miss Midkiff for the payment to the United States of the amount of the shortage in Captain Bakken's accounts. Both Captain Bakken and Miss Midkiff refused to agree to pay any part of such shortage. Thereafter deductions were

made from Captain Bakken's pay in the aggregate amount of \$800, with the result that at the time of his separation from the military service there remained a shortage in his accounts in the principal sum of \$3,692.02.

On July 16, 1945, the War Department advised the Attorney General of the shortage in the accounts of Captain Bakken. Subsequently on August 12, 1946, after Captain Bakken had been separated from the military service, the War Department made a formal demand upon the Maryland Casualty Co. to reimburse the United States in the amount of \$3,692.02 (the balance of the shortage in Captain Bakken's accounts). Up to the present time the Maryland Casualty Co. has failed to pay such sum or any part thereof to the United States.

On September 13, 1949, the Department of the Army advised the Attorney General that there remained a shortage of \$3,692.80 (which should have been stated as \$3,692.02) in the accounts of Captain Bakken as sales officer at Vancouver Barracks and requested that the Department of Justice take such action as might be deemed necessary to protect the interests of the United States. On September 27, 1949, the Attorney General advised the Department of the Army that the case should be referred to the General Accounting Office for the rendition of a statement of the account of Captain Bakken in accordance with the provisions of section 2 of the act of August 8, 1888 (25 Stat. 387; 6 U. S. C. 5). Thereafter on October 26, 1949, the Department of the Army transmitted the case to the General Accounting Office for consideration. On May 21, 1951, the General Accounting Office rendered a statement of account showing that Captain Bakken was indebted to the United States in principal and interest as of May 31, 1951, in the aggregate amount of \$5,686.54 (\$3,692.02, principal; and \$1,994.52, interest) on account of the shortage in his accounts as sales officer at Vancouver Barracks. On the same date the Comptroller General transmitted a copy of said statement to Captain Bakken with the demand that he pay to the United States said sum. The Comptroller General also sent a copy of said statement of account to the Maryland Casualty Co. on May 21, 1951, and made a demand upon said company for the sum of \$5,000, the amount of its liability as surety on the bond of Captain Bakken.

On June 5, 1951, the Comptroller General referred the claim of the United States against Captain Bakken and the Maryland Casualty Co. to the Attorney General for the institution of a court proceeding to protect the interests of the Government. Thereafter on June 14, 1951, the United States instituted a suit against the Maryland Casualty Co. in the United States District Court for the District of Columbia (Civil Action No. 2431-51) for the recovery of the balance in the shortage of the accounts of Captain Bakken, together with interest thereon. The complaint was served on the defendant on the same date. The time within which the defendant may plead in this case has been extended several times, the last extension being by an order of the court entered on December 18, 1951, which extended until March 17, 1952, the time within which the defendant may file an answer in the case.

In answer to your final inquiry, you are advised that the records of the Department of the Army fail to disclose any evidence of misconduct on the part of Captain Bakken as sales officer at Vancouver Barracks, Wash., or that he profited personally from his position as such sales officer.

Sincerely yours,

FRANK PACE, Jr.,
Secretary of the Army.

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